

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAMON VILLANUEVA-BAZALDUA)	
individually and on behalf of other)	
similarly situated,)	Civil Action No. 06-185
)	
Plaintiff,)	
)	
v.)	
)	
TRUGREEN LIMITED PARTNERS ¹)	
and TRUGREEN, INC. ² d/b/a)	
TRUGREEN CHEMLAWN, ³)	
)	
Defendants.)	

**DEFENDANTS' REPLY IN FURTHER SUPPORT OF
ITS MOTION FOR EXTENSION OF TIME TO
ANSWER, RESPOND OR OTHERWISE PLEAD**

Defendants TruGreen Limited Partners, d/b/a TruGreen Chemlawn, as well as TruGreen, Inc. (hereinafter “TruGreen”) hereby submit their reply in further support of their Motion for Extension of Time to Answer, Respond or Otherwise Plead to Plaintiff’s Complaint (“Motion for Extension”) and state as follows:

1. In 2004, Plaintiff worked for TruGreen Limited Partnership on an H-2B Visa. Plaintiff’s Complaint alleges that, prior to accepting employment in 2004, TruGreen made promises to him about wages and other perquisites, and that he relied on these alleged promises to his detriment. See Complaint ¶¶ 17, 34-36. Plaintiff also alleges that TruGreen violated the Fair Labor Standards Act (“FLSA”) by paying him a salary plus overtime, and by failing to account for alleged expenses incurred during the first and last workweeks of employment with

¹ The correct legal name is TruGreen Limited Partnership.

² TruGreen, Inc. was not Plaintiff’s employer, and therefore, is not a proper party in this action.

³ TruGreen, Inc. does not do business as (d/b/a) TruGreen Chemlawn; TruGreen Limited Partnership does do business as (d/b/a) TruGreen Chemlawn.

TruGreen. See Complaint ¶¶ 23-26, 29. On his FLSA claims, Plaintiff seeks to represent a class of “all H-2B workers employed by Defendant TruGreen Limited Partners[hip] at any time between 2003 and 2006.” Complaint ¶ 9.

2. TruGreen requested a 15-day extension of time to file a responsive pleading, which Plaintiff denied. As a result, TruGreen filed a Motion for Extension of Time, which is pending before the Court.

3. Plaintiff has filed a Response to TruGreen’s Motion for Extension. As Plaintiff’s Response Motion reflects, Plaintiff concedes that TruGreen should have more time to file its responsive pleading. Plaintiff, however, will not agree to 15-day extension of time without unreasonable conditions. In particular, Plaintiff’s counsel will only agree to an extension of time if TruGreen agrees to extend the statute of limitations for unnamed individuals, who are not currently parties in this action, for the same time period.

4. At all times, Plaintiff and/or each unnamed individual whom Plaintiff’s counsel seeks to represent had the timeliness of all claims completely in his or her own control. At the very least, if Plaintiff’s counsel wanted to ensure the timeliness of certain claims, counsel could have filed this Complaint, or Complaints on behalf of other individuals, on an earlier date.

5. Plaintiff’s counsel failed to do so.

6. In short, there is nothing that TruGreen has done that impacted Plaintiff’s or any putative Plaintiffs’ ability to preserve the timeliness of their claims, and, therefore, it would be inequitable to toll the statute of limitations in these circumstances.

WHEREFORE, Defendants request that their Motion for Extension be granted without regard to the relief requested by Plaintiff.

Respectfully submitted,

/s/ Michael P. Kelly

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Pro Hac Application in process for:

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OF COUNSEL:
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Dated: April 19, 2006

Attorneys for Defendants

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TRUGREEN CHEMLAWN,³)
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Defendants.)

CERTIFICATE OF SERVICE

Michael P. Kelly hereby certifies that on this 19th day of April, 2006, a copy of the Defendants' Reply in Further Support of Its Motion for Extension of Time to Answer, Respond or Otherwise Plead was served electronically on the following:

Vivian L. Rapposelli
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Wilmington, DE 19805

/s/ Michael P. Kelly
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